

# **EXHIBIT D**

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Superior Court of California,  
County of Los Angeles  
2/26/2025 11:07 AM  
David W. Slayton,  
Executive Officer/Clerk of Court,  
By E. Salcido, Deputy Clerk

6 Attorneys for Defendant  
7 LEXINGTON INSURANCE COMPANY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES – LONG BEACH DIVISION

10 BOARD OF TRUSTEES OF THE  
11 CALIFORNIA STATE UNIVERSITY, a  
12 public entity,

13 Plaintiff,

14 v.

15 LEXINGTON INSURANCE COMPANY, a  
16 Delaware Corporation; and Does 1 through  
17 10,

18 Defendants.

Case No. 25LBCV00133

**DEFENDANT'S ANSWER TO COMPLAINT  
FOR BREACH OF INSURANCE  
CONTRACT; BREACH OF COVENANT OF  
GOOD FAITH AND FAIR DEALING; and  
DECLARATORY RELIEF**

Complaint Filed: 1/21/2025

19 Defendant LEXINGTON INSURANCE COMPANY (“Lexington” or “Defendant”)  
20 answers BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY’s (“Plaintiff”)  
21 unverified Complaint (“the Complaint”) as follows:

22 **GENERAL ANSWER AND DENIAL**

23 Pursuant to California Code of Civil Procedure section 431.30(d), Lexington generally and  
24 specifically denies each and every allegation set forth in the Complaint, and each and every cause  
25 of action contained therein. Lexington further denies that Plaintiff has sustained or will sustain any  
26 damage at all, in any sum, by reason of any act or omission on the part of or imputed to Lexington.  
27 Lexington denies that Plaintiff is entitled to any relief whatsoever from Lexington and specifically  
28 denies that Plaintiff is entitled to any monetary damages in any amount.

## **AFFIRMATIVE DEFENSES**

Unless otherwise specifically provided herein, Lexington raises each of the following affirmative defenses to each and every cause of action asserted against it and to each of the acts and/or omissions with which Lexington is charged in the Complaint. By setting forth these additional affirmative defenses, Lexington does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiff's allegations.

## **FIRST AFFIRMATIVE DEFENSE**

**(No Claim for Relief)**

For a first defense, Lexington alleges that Plaintiff's Complaint, and each and every purported cause of action asserted therein fails to state facts sufficient to constitute any cause of action or a claim for relief against Lexington.

## **SECOND AFFIRMATIVE DEFENSE**

### **(Waiver/EstoppeL)**

For a second defense, Lexington is informed and believes, and on that basis alleges, that Plaintiff's claims are barred to the extent that the doctrines of waiver and/or estoppel apply.

### THIRD AFFIRMATIVE DEFENSE

### **(Other Insurance)**

For a third defense, Lexington alleges that to the extent that Plaintiff's loss or damages may have been paid for, in whole or in part, by other insurance, that payment reduces any recovery by Plaintiff against Lexington in the amount of that payment, including but not limited to by operation of the "Other Insurance" provisions of Lexington's Policy, set forth below:

\* \* \*

## SECTION IV

## GENERAL CONDITIONS

\* \* \*

## R. OTHER INSURANCE

1       Permission is hereby granted to the Named Insured to carry more specific insurance on any  
2       property covered under this Policy. This Policy shall not attach or become insurance upon  
3       any property which at the time of loss is more specifically described and covered under any  
4       other policy form until the liability of such other insurance has first been exhausted and  
5       shall then cover only the excess of value of such property over and above the amount  
6       payable under such other insurance, whether collectible or not. This Policy, subject to its  
7       conditions and limitations, shall attach and become insurance upon such property as  
8       respects any peril not covered by such other insurance and not otherwise excluded therein.

9       \*\*\*

10       **FOURTH AFFIRMATIVE DEFENSE**

11       **(Policy's Conditions, Exclusions, and Limitations)**

12       For a fourth defense, Lexington alleges that the Complaint, the claims, and the recovery  
13       sought therein, are barred, in whole or in part, by the terms, conditions, definitions, limitations and  
14       exclusions contained in Policy number 011660459/03, effective July 1, 2016, through July 1, 2017  
15       ("Policy") issued by Lexington. This affirmative defense incorporates the entirety of the Policy  
16       issued by Lexington, including but not limited to the following:

17       \*\*\*

18       **SECTION II**

19       **PROPERTY DAMAGE**

20       \*\*\*

21       **C. PROPERTY NOT COVERED**

22       \*\*\*

23       3. Land (including land on which covered property is located), and land value  
24       (except athletic fields, landscaping, sand traps, tees and greens).

25       \*\*\*

26       **FIFTH AFFIRMATIVE DEFENSE**

27       **(Offset)**

28       For a fifth defense, Lexington alleges that Plaintiff's recovery shall be barred or diminished  
1       to any extent Lexington is entitled to offsets from any collateral source, including but not limited to  
2       offsets arising from Plaintiff's recovery from other persons, entities and/or parties.

3       ///

4       ///

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Claims Are Time-Barred)**

3 For a sixth defense, to the extent applicable, Lexington alleges that Plaintiff's claims and  
4 the recovery sought therein, are time-barred, in whole or in part, by applicable statutes of  
5 limitations and/or by the terms, conditions, definitions, limitations and exclusions of the Policy,  
6 including but not limited to:

7 \*\*\*

8 **SECTION IV**

9 **GENERAL CONDITIONS**

10 \*\*\*

11 **W. SUIT AGAINST COMPANY**

12 No suit, action or proceeding for the recovery of any claim under this Policy shall be  
13 sustainable in any court of law or equity unless the Named Insured shall have complied  
14 with all the requirements of this Policy, nor unless this suit is commenced within twelve  
15 (12) months after the date that the Company has made its final offer of settlement or denial  
16 of the loss. However, that if under the laws of the jurisdiction in which the property is  
located such limitation is invalid, then any such claims shall be void unless such action, suit  
or proceedings be commenced within the shortest limit of time permitted by the laws of  
such jurisdiction.

17 \*\*\*

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Rights Protected by the Constitution)**

20 For a seventh defense, Lexington alleges that the imposition of punitive or exemplary  
21 damages against Lexington would constitute a denial of Lexington's rights under the United States  
22 Constitution and the California Constitution, including, but not limited to, the Fifth, Eighth and  
23 Fourteenth Amendments to the United States Constitution and Article I, Section 7, and Article IV,  
24 Section 16 of the California Constitution.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 **(Right to Amend or Supplement)**

27 For an eighth defense, Lexington alleges that Plaintiff has failed to set forth its claims with  
28

1 sufficient particularity to permit Lexington to raise all appropriate defenses, and therefore,  
2 Lexington reserves the right to seek leave of court to amend and supplement this Answer, including  
3 these Defenses, to specify further grounds for denying all of the causes of action that Plaintiff  
4 alleges against Lexington and rejecting any and all claims that are the subject of those causes of  
5 action.

6 **NINTH AFFIRMATIVE DEFENSE**

7 **(Reservation of Currently Unknown Defenses Pending Discovery)**

8 For a ninth defense, Lexington specifically reserves the right to assert any and all  
9 affirmative defenses or affirmative claims against Plaintiff, or others, in the event that discovery in  
10 this matter indicates that such additional defenses and/or claims may be applicable.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Lexington prays for judgment as follows:

- 13 1. That Plaintiff take nothing by reason of its complaint;
- 14 2. That judgment be entered in favor of Lexington;
- 15 3. That Lexington be awarded its costs of suit; and
- 16 4. That the Court grant such other and further relief as it may deem just and proper.

17  
18 Dated: February 26, 2025

MOUND COTTON WOLLAN & GREENGRASS LLP

19  
20 By:

21 Jonathan Gross  
22 Megan Wendell  
23 Attorneys for Defendant  
24 LEXINGTON INSURANCE COMPANY

1 PROOF OF SERVICE

2 I am a citizen of the United States and employed in the County of Alameda, City of  
3 Emeryville, California. I am over the age of eighteen years and not a party to the within action.  
4 My business address is Mound Cotton Wollan & Greengrass LLP, 2200 Powell Street,  
5 Suite 1050, Emeryville, California 94608.

6 I am familiar with Mound Cotton Wollan & Greengrass LLP's practice whereby  
7 each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed  
8 thereon, and the sealed envelope is placed in the office mail receptacle. Each day the mail is  
9 collected and deposited in a United States Postal mailbox at or before the closed of business each  
10 day.

11 On the date below-written, I served the following document(s):

12 **DEFENDANT'S ANSWER TO COMPLAINT FOR BREACH OF INSURANCE  
13 CONTRACT; BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING;  
14 and DECLARATORY RELIEF**

15 ( X ) (BY REGULAR MAIL) By placing a true copy thereof enclosed in a sealed  
16 envelope with postage thereon fully prepaid, in the designated area for outgoing mail at  
17 Emeryville, California, addressed as set forth below:  
18  
( X ) (BY EMAIL OR ELECTRONIC TRANSMISSION): I caused a true copy of the  
document(s) described to be served by electronic mail to the addressee(s) set forth below  
from email address [kmcandrews@moundcotton.com](mailto:kmcandrews@moundcotton.com). I did not receive, within a reasonable  
time after the transmission, any electronic message or other indication that the transmission  
was unsuccessful.

19 Debra Steel Sturmer  
20 Sara P. Douglass  
21 LERCH STURMER LLP  
22 One Sansome Street, Suite 740  
23 San Francisco, California 94104  
[dsturmer@lerchsturmer.com](mailto:dsturmer@lerchsturmer.com)  
[sdouglass@lerchsturmer.com](mailto:sdouglass@lerchsturmer.com)

24 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct to the best of my knowledge. Executed on February 26, 2025, at  
Walnut Creek, California.

25  
26   
27 Kelly McAndrews  
28